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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

August 24, 1992

BY HAND DELIVERY

Ms. Donna Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: MM Docket No. 91-221
Notice of Proposed Rule
Making, FCC 92-209

Dear Ms. Searcy:

On behalf of WKRG-TV, Inc. and WEVV, Inc., I am transmitting herewith an original and nine copies of their Joint Comments in the above-referenced proceeding.

Should there be any questions concerning this matter, please contact the undersigned.

Very truly yours,

Dennis P. Corbett

Dennis P. Corbett

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Enclosures

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BEFORE THE

Federal Communications Commission

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Review of the Commission's	)	MM Docket No. 91-221
Regulations Governing	)	
Television Broadcasting	)	

To: The Commission

JOINT COMMENTS

WKRG-TV, INC.
WEVV, INC.

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August 24, 1992

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Summary

WKRG-TV, Inc. and WEVV, Inc. strongly support elimination of the radio-television cross-ownership prohibition (the "one-to-a-market" rule), and relaxation of the restriction on television duopolies. These modest deregulatory steps are fully justified and necessary to adapt the Commission's broadcast multiple ownership limitations to the current realities of the media marketplace.

Both of these rules were motivated by a desire to ensure that a diverse range of viewpoints is available in every locality, and that there is substantial competition for advertising dollars among media outlets. With the enormous expansion of the electronic media during the last two decades, these important objectives can now be met through substantially less restrictive limits.

Existing restrictions on local radio ownership, along with modestly relaxed limits on ownership of television stations with overlapping principal community contours, will be sufficient to prevent undue media concentration in local markets. At the same time, limited consolidations will permit television licensees to benefit from operating efficiencies already available to radio licensees, while also promoting new investment in struggling broadcast outlets. In turn, these economic benefits are likely to produce substantial public interest dividends through continued local ownership of facilities that now are financially troubled, as well as through increased spending on community-oriented programming.

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
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Television Broadcasting)

To: The Commission

JOINT COMMENTS

WKRG-TV, Inc. ("WKRG") and WEVV, Inc. ("WEVV"), by their attorneys, hereby respond to the above-captioned Notice of Proposed Rule Making ("NPRM"), FCC 92-209, released by the Commission on June 12, 1992. Among other items, the NPRM seeks public comment on the elimination or modification of Section 73.3555(b) of the Commission's rules, known as the radio-television cross-ownership or "one-to-a-market" rule, which prohibits a single licensee from owning a television and a radio station in the same market, based on parameters set by the rule.[1/] The Commission also proposes changes to Section 73.3555(a)(3) of its rules, the television duopoly rule, which prohibits a single entity from owning two television stations with overlapping grade B contours.[2/] These comments address both of these aspects of the NPRM.

1/ See 47 C.F.R. § 73.3555(b).

2/ See 47 C.F.R. § 73.3555(a).

WKRG is the licensee of broadcast stations WKRG-TV, WKRG(AM) and WKRG-FM, Mobile, Alabama. Because this cross-ownership already existed in 1970, when the one-to-a-market rule was adopted, WKRG's ownership of both a television station and radio stations in the same market was grandfathered.[3/] WEVV is the licensee of broadcast television station WEVV(TV), Evansville, Indiana.

I. The Realities of the Video and Audio Marketplaces Have Changed Dramatically Since The "One-To-A-Market" Rule Was Adopted in 1970

A. Overview

When the Commission adopted the one-to-a-market rule in 1970, it was intended to promote "a diversity of viewpoints" and competition for advertising dollars.[4/] At that time, the Commission cited daily newspapers as a principal competitor of the broadcast medium, and emphasized that the number of cities with competing daily newspapers was declining.[5/] The Commission noted as well that the increasing strength of the television and FM radio services was prompting it to abandon

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3/ See 47 C.F.R. § 73.3555, Note 4.

4/ The Commission noted that "one effect of combined ownership of broadcast media in the same market is to lessen the degree of competition for advertising among the alternative media." Multiple Ownership of Standard, FM & TV Broadcast Stations, 22 F.C.C.2d 306, 313 (1970).

5/ Id. at 312.

its prior policy of encouraging AM licensees to become operators of television and FM facilities in order to promote their development.6/

As the Commission has acknowledged on numerous occasions, including the instant NPRM, "the television industry has undergone significant change in the past decade and a half, as reflected in the current state of the video programming market."7/ In particular, the Commission noted the "enormous expansion in the number of video outlets available to most viewers," as well as in "alternative sources of video programming."8/

Clearly, the media marketplace has changed at least as dramatically, and likely more so, in the two decades since 1970 as it had in the 25 years preceding the adoption of the television-radio cross-ownership ban. Today, for example, the print media cannot realistically be considered the primary source of competition for broadcasters. In 1970, cable television was in its infancy, FM radio had not yet displaced AM as the dominant aural service, and video cassette recorders and home computers were only in early stages of development. Today, nearly two-thirds of American households subscribe to a cable television service, the number of FM radio stations has

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6/ Id.

7/ NPRM at 3 (¶3).

8/ See NPRM at 3 (¶3).

increased by more than 100 percent since 1970,[9/] video cassette recorders have a market penetration of 76.6 percent,[10/] and a growing number of Americans use home computers to access information through database services such as Prodigy and Compuserve.

The Commission has already taken several important steps to adapt its regulatory scheme to the new market realities produced by these dramatic changes. It has raised the national limits on radio station ownership, permitted single entities to own two AM and FM stations in larger markets, relaxed the prohibition on television network-cable system cross-ownership, and permitted telephone companies to begin providing outlets for video programming services. Of particular relevance to this proceeding, the Commission identified as a key basis for its decision to relax the local radio ownership restrictions the fact that ownership of more than one broadcast facility in a market (or region) permits beneficial consolidation of many functions, including administration, newsgathering and production.[11/]

9/ See Broadcast Multiple Ownership Rules, 4 FCC Rcd 1741, 1755 n.11 (1989).

10/ See F. Setzer and J. Levy, Broadcast Television in a Multichannel Marketplace, FCC Office of Plans and Policy Working Paper No. 26, 6 FCC Rcd 3996, 4066 (1991) ("OPP Report").

11/ See Revision of Radio Rules and Policies, 7 FCC Rcd 2755, 2774-75 (1992).

Despite these changes, some broadcasters are still prevented by outdated rules from taking advantage of the scale economies promoted by the Commission's deregulatory efforts, particularly the relaxation of the radio rules. While radio licensees will soon be permitted to acquire additional radio facilities in the same market, the owner of a single television station currently is prohibited from making the same acquisition, and realizing similar benefits. Indeed, even cable television operators, who already have a competitive advantage over broadcasters due to revenue streams from both advertisers and subscribers, are permitted to own a full complement of radio stations in the markets where they operate.

As the Commission recently observed in relaxing the network-cable cross-ownership prohibition, regulations that have outlived their original pro-competitive purposes may actually hamper competition by unnecessarily limiting the ability of experienced market participants to diversify and generate new sources of income.[12/] As indicated in the NPRM and explained below, the vast changes in the video marketplace have so thoroughly altered the competitive landscape that the factors identified by the Commission in enacting the

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12/ See Amendment of Part 76, Subpart J, Section 76.501 of the Commission's Rules and Regulations to Eliminate the Prohibition on Common Ownership of Cable Television Systems and National Television Networks, MM Docket No. 82-434 (released July 17, 1992), at 6 (¶8) ("Network-Cable Cross-ownership").

one-to-a-market rule in 1970 now weigh heavily in favor of the rule's repeal.

B. Increased Diversity of Voices

The amount of information and programming available to television viewers has increased enormously since the 1970s.[13/] Indeed, the number of broadcast television stations alone has increased by more than fifty percent, and more than half of all households now receive ten or more television signals *over-the-air*.[14/] Independent television stations account for approximately three-quarters of this growth,[15/] which has sparked the rapid development of a robust market for original syndicated programming over the past decade, creating more new viewing options. These same forces have prompted the emergence of the Fox network as an aggressive and successful broadcast competitor.

Yet, this impressive growth in the number of television broadcast stations is dwarfed by the explosive expansion of the cable industry since 1970. In 1976, slightly less than one-third of U.S. homes were passed by cable

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13/ *See* NPRM at 3-5 (¶¶3-7).

14/ *Id*. at 3 (¶3).

15/ *Id*.

television. Today that number exceeds ninety percent.[16/] In addition to enhanced reception of most over-the-air signals, cable systems provide subscribers with many additional channels of programming drawn from more than 100 national and regional cable networks now in operation.[17/] Other homes can receive such programming from wireless and private cable systems or through use of home satellite dishes. In the future, direct broadcast satellite (DBS) service may provide yet another means for viewers to receive these program services.

Recent studies indicate phenomenal growth in the amount of news, information and public affairs programming provided via cable channels.[18/] In particular, during the past several years, there has been a significant trend toward the development of local cable news channels, which provide news updates and public affairs programming focused upon local issues in much the same way that the Cable News Network ("CNN")

16/ See OPP Report, 6 FCC Rcd at 4044.

17/ See NPRM at 3 (¶3) (citing OPP Report, 6 FCC Rcd at 4049). With the advent of digital compression and other technological advances, future cable systems are expected to achieve channel capacities of 400 or more, providing viewers with virtually limitless options. See Network-Cable Cross-Ownership at 9 (¶12).

18/ According to a 1991 study by the National Cable Television Association, cable-provided news and public affairs programming increased nearly four-fold in major markets between 1980 and 1991. See Statement of Alfred C. Sikes Before the Senate Subcommittee on Communications on the "Public Interest" Standard Under the 1934 Communications Act, June 20, 1991.

and the CNN Headline News service provide information on national and international affairs.

The explosion in the availability of programming to the home is not limited to video delivery. Home satellite dish owners can already receive a large number of radio services from communities located throughout the United States.[19/] Cable operators have also begun to offer subscribers many channels of digital radio via such services as Digital Cable Radio and Digital Music Express. Moreover, several companies propose to inaugurate digital audio satellite broadcasting services by the mid-1990s, potentially making dozens of new radio outlets available in every market in the country.

Finally, an increasing number of Americans have access to other sources of information via home computers, which may be used to access a variety of electronic bulletin board and database services that are additional sources of news, information and competing viewpoints. For example, several Presidential candidates made extensive use of computer bulletin boards during the 1992 primary season to communicate their views directly to the public and to respond to voter questions. Even the national cable service CNBC is now being delivered through personal computers. Broadcasting, August 10, 1992 at 65.

19/ See Revision of Radio Rules and Policies, 6 FCC Rcd 3275 (1991).

In light of the multiple sources of information available today and the overwhelming increase in the number of media outlets, it is clear that the acquisition of broadcast facilities in different services in the same market or of two television stations in the same market does not have the same potential to diminish viewpoint diversity that it did when the cross-ownership and duopoly prohibitions were adopted. Benefitting from an astonishing technological revolution, Americans now have access to a tremendous variety of information sources, many of which were unrealized and unknown when the one-to-a-market rule was adopted.

C. Increased Competition For Advertising Dollars

Along with the explosion in the number of media outlets and other information sources available to the average home has come a dramatic escalation in competition for advertising dollars among television stations and other types of communications outlets. The cable industry, for example, is competing much more effectively for advertising dollars than it has in the past, and its rapid growth is expected to continue. According to the Cabletelevision Advertising Bureau, local advertising on cable television totalled only $32 million in 1982, but was expected to reach $800 million dollars in 1991, a

$135 million increase over the preceding year's total.[20] Moreover, as the Commission noted in the NPRM, "the fact that cable's share of advertising revenues is lower than its share of viewers (6 percent of advertising revenues as compared with 22 percent of viewing on channels accepting advertising) suggests that substantial cable advertising growth could occur as advertisers respond to audience shifts and as mechanisms develop for measuring and selling cable audiences more effectively."[21]

Cable operators have significant advantages in selling time to many types of advertisers. For example, because cable is a multi-channel service, it has a much larger inventory of advertising time to sell than a local broadcast station.[22] Cable also offers advertisers an opportunity to target advertising to specific audiences at a lower cost than the

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20/ See "Cable TV Captures Advertisers," Washington Post, July 14, 1991, at H1.

21/ See NPRM at 5 (¶7).

22/ A recent article in Broadcasting magazine indicated that the aggregate amount of national cable advertising time, measured in thirty second units, increased more than 225 percent between 1980 and 1990, while network television and spot advertising inventory increased by just fifteen percent and eight percent, respectively. Moreover, the latter categories are expected to decline during the next half-decade, while cable advertising continues to grow. See S. Moshavi, TV Spots: Less Supply to Demand, Broadcasting, April 6, 1992, 40 (chart).

general interest audience to whom much broadcast television programming is directed.[23/]

At the same time, the aggregate basic cable audience reached by many systems delivers numbers similar to many local broadcast television stations.[24/] Unlike the broadcast audience, however, these viewers are conveniently distributed among channels directed to specialized interests. Thus, cable operators can offer advertisers a wide variety of selling strategies directed to both general interest and niche audiences.[25/] In short, cable has the capability to provide many of the benefits of either broadcast television or broadcast radio advertising.

Despite these inherent competitive advantages, cable operators, unlike broadcast television stations, are permitted to own radio stations in the markets where they operate.[26/] As the Commission indicated when it last revisited the one-to-a-market rule, such "inequitable treatment . . . through government regulation rather than competitive business activity" has the unwarranted effect of giving the cable

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23/ See OPP Report, 6 FCC Rcd at 4082.

24/ Id. at 4049.

25/ Id. at 4082.

26/ Similarly, as discussed above, radio broadcasters in larger markets may own up to four facilities, while the operator of a single television station is generally barred from the radio business in the same market.

television service a competitive advantage over free, over-the-air television.[27] As the Commission also then emphasized, an essential element of the agency's responsibility under the Communications Act "is to create a local television market that allows local broadcasters to compete fully and fairly with other marketplace participants."[28] While the Commission determined at that time that it was not yet ready to repeal the one-to-a-market restriction completely, the accelerated pace of change in the marketplace now clearly justifies this step. Far from impeding competition, elimination of the one-to-a-market rule and relaxation of the television duopoly prohibition are necessary to level the playing field and permit more equal competition in the video marketplace.

II. New Ownership Options For Local Broadcasters Will Produce Substantial Public Interest Benefits By Permitting Greater Operating Efficiencies And Allowing Increased Investment By Experienced Broadcasters Without Risks Of Undue Concentration

The above-described changes in the broadcast media environment clearly justify a responsive change in approach to local ownership restrictions. In the view of WKRG and WEVV, existing restrictions on local broadcast ownership, even with

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[27] Broadcast Multiple Ownership Rules, 4 FCC Rcd at 1746.

[28] Id. (citing Report and Order in Gen. Docket No. 87-24, 3 FCC Rcd 5299, 5311 (1988).

adoption of the modifications advocated herein, will be sufficient to prevent undue concentration in the communications media while maintaining a wide range of diverse viewpoints. Moreover, by allowing established local broadcasters to own facilities in more than one broadcast service, the Commission will foster substantial operating efficiencies, and provide local broadcasters who are already involved in their communities opportunities to expand and enhance programming directed to local concerns.

First, it is of central importance that other limitations on local ownership of radio and television stations will remain in place after elimination of the one-to-a-market rule. For that reason, repeal of the one-to-a-market prohibition will decidedly <u>not</u> open the floodgates to undue or harmful concentration in local markets. Under the revised radio ownership rules, a single owner would be permitted to own no more than four radio stations in a single market and, even with changes in the television duopoly rule as advocated herein, no more than two television stations in that same market. For example, elimination of the one-to-a-market rule would not allow television station owners to go on an unlimited radio buying spree in their local markets. To the contrary, a licensee such as WKRG could merely buy two more radio stations in the Mobile market. Allowing such modest marketplace adjustments in the face of overwhelming evidence of changes in marketplace realities is the essence of reasoned decisionmaking.

Furthermore, dynamic economic consolidations as well as the infusion of new capital into all segments of the broadcast industry are clearly needed. In the highly competitive current broadcast environment, many radio and television stations are losing substantial sums of money each year. Indeed, a recently released survey by the National Association of Broadcasters shows that more than half of all independent television stations lost at least $300,000 in 1991, and that 25% of all network affiliates lost at least $475,000.[29/] Without new capital, some of these stations may be forced to go off the air. Even among stations that are breaking even, market conditions are forcing tough cost cutting decisions, including staff reductions. Unfortunately, one of the first areas to be scaled back is often news and public affairs programming because producing high quality news and public affairs programming is extremely expensive.[30/]

As the Commission recently stated in adopting revised rules concerning radio station multiple ownership, and reiterated in its NPRM, ownership of more than one broadcast facility in a market (or region) permits beneficial

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29/ NAB Survey Results Called Worst In Years: 50% of Independent Stations and 25% of Affiliates Posted Big 1991 Losses, Communications Daily, August 7, 1992, at 1.

30/ See Revision of Radio Rules and Policies, 7 FCC Rcd at 2774.

consolidation of functions, including administrative, newsgathering and production functions.31/ In particular, in its 1989 reconsideration of the television-radio cross-ownership ban, the Commission identified the following six specific areas of operation where efficiencies may be realized through intra-market consolidation: (1) co-location of studio and office, and of tower and transmission facilities; (2) sharing of technical and administrative staffs including chief engineers and bookkeepers; (3) sharing of professional services such as attorneys, accountants, financial institutions, and insurance carriers (and consulting engineers, as well); (4) efficiencies in advertising and promotion, including co-sponsorship of community events and public service campaigns; (5) consolidated news gathering departments; and (6) efficiencies in sale of advertising.32/ In turn, these economies permit allocation of additional station resources to locally oriented programming.33/

At the same time, while some beneficial consolidation would undoubtedly result from elimination of the

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31/ See NPRM at 10 (¶17) (citing Revision of Radio Rules and Policies, 7 FCC Rcd at ¶¶ 32, 37-38.).

32/ See Broadcast Multiple Ownership Rules, 4 FCC Rcd at 1746-47.

33/ "Significantly, cost savings from joint operation are likely to be invested in capital improvements and better programming that will inure to the benefit of the listening public." Revision of Radio Rules and Policies, 7 FCC Rcd at 2776.

one-to-a-market rule, the radio and television industries are and shall remain distinct in important respects, alleviating any fears of undue concentration. Indeed, so long as the one-to-a-market rule remains in effect, television station owners like WKRG, who own grandfathered AM/FM combinations, are placed at a competitive disadvantage vis-a-vis radio station owners in their markets. Under the newly revised radio ownership rules, non-television station owners in markets like Mobile can own up to four radio stations in the market. WKRG, on the other hand, cannot buy new radio stations in its market except through a waiver of the one-to-a-market rule. WKRG's radio sales force would thus be shackled by an outmoded Commission rule in its efforts to compete. WKRG could offer only one co-owned AM/FM station combination to radio advertisers, while its competitors in the market will be able to offer advertisers up to four commonly owned and controlled radio signals.

By permitting established licensees of radio and television stations to acquire other television and radio facilities in the same market, the Commission will not only help troubled outlets survive, but may also promote continued local operation of these facilities. The concept of localism, of course, has long been a keystone of U.S. broadcast regulation.[34/] From a practical standpoint, no potential buyer is better equipped to provide quality, locally oriented programming than a successful broadcaster with an established record of service to the community.

These same considerations also strongly favor the relaxation of the television duopoly rule. As the Commission observed in the NPRM, common ownership of co-located, _same service_ facilities "may hold promise for the greatest economic efficiencies."[35/] In light of the strong competitive challenge from cable and other multi-channel providers, a significant relaxation of the rule is warranted, consistent with the similar steps already adopted with respect to the radio duopoly rules. As the Commission acknowledges, because the level of competition in local markets has increased dramatically since the duopoly rule was adopted in 1964, with more than half of the households in the country receiving at least 30 channels (including cable), television licensees should not be denied opportunities to improve local service by taking advantage of operating efficiencies that are now available to radio broadcasters.

In particular, the relevant contour for determining prohibited overlap under the duopoly rule should be changed

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34/ _See_, _e.g._, _Deregulation of Radio_, 84 F.C.C.2d 968, 994 (1981) ("the concept of localism was part and parcel of broadcast regulation virtually from its inception").

35/ NPRM at 10 (¶17).

from the Grade B contour to the Grade A contour, as suggested by the Commission.36/ In addition, television licensees should be permitted to own two stations, so long as one is a UHF facility.37/ As long as the Commission permits only UHF and VHF combinations, WKRG and WEVV do not believe it is necessary to limit combinations based on the number of independently owned stations that will remain after the combination. Such a standard unfairly benefits those stations that are able to combine immediately following the rule changes. However, to the extent such a standard is adopted, the parties believe that all commercial, noncommercial and LPTV stations whose signals cover any portion of a market should be included.

36/ See NPRM at 10 (¶18).

37/ Should the UHF/VHF distinction disappear upon transition to ATV technology, the rule could then allow any two station combination. See NPRM at 11 n.37.

III. Conclusion

For the reasons set forth above, WKRG and WEVV recommend that the Commission take the following actions: (1) eliminate the one-to-a-market rule; and (2) amend the multiple ownership rules to permit combinations of UHF and VHF television stations in the same market.

Respectfully submitted,

WKRG-TV, INC.
WEVV, INC.

By: Dennis P. Corbett

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August 24, 1992

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